

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SALES TAX REFERENCE No. 12 of 1995****For Approval and Signature:****HONOURABLE MR.JUSTICE ANIL R. DAVE****HONOURABLE MS. JUSTICE R.M.DOSHIT**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?
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**COMMISSIONER OF SALES TAX - Applicant(s)**

**Versus**

**MAHESH OIL MILL - Opponent(s)**

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**Appearance :**

MR V.M. PANCHOLI, A.G.P for Applicant(s) : 1.  
Opponent served.

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**CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE**  
**and**  
**HONOURABLE MS. JUSTICE R.M.DOSHIT**

**Date : 16/01/2006**

**ORAL JUDGMENT**

**(Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)**

This Reference made under Section 69 of the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "**the Act**") arises from the judgement and order dated 20<sup>th</sup> April, 1989 passed by the Gujarat Sales Tax Tribunal (hereinafter referred to as "**the Tribunal**") in Second Appeal No. 98/1986.

The question referred to this Court reads as under;

"Whether on the facts and in the circumstances of the case, the decision of the Sales Tax Tribunal dated 20/4/1989 to hold the disputed transaction of 528 tins of groundnut oil from Jamkhambaliya to Bangalore on 28<sup>th</sup> December, 1976 as of consignment transaction of opponent is perverse in as much as the Tribunal has grossly erred in law and perversely appreciated the evidence before it and when the opponent had failed to discharge his burden of proof in establishing his claim of deduction as consignment transfer?"

The Opponent, M/s Mahesh Oil Mill, is a dealer

registered under the Act and under the Central Sales Tax Act, 1956. During the year 1976-77 the dealer had sold 528 tins of groundnut oil to one Vimsag Oilseeds Corporation (hereinafter referred to as "**the Corporation**") at Bangalore. At the time of assessment, the dealer claimed that 528 tins of oil was transferred by the dealer to the receiver, the Corporation, by way of consignment and produced a declaration made in form "F" by the Corporation. The said sale was made at the rate of Rs. 113.50 per tin of oil. In receipt thereof, the dealer had received a sum of Rs. 59,928/-. At the time of assessment, the dealer claimed that out of 528 tins sent by it, 24 tins were found to be empty. The said stock of oil was sold by the Corporation at the rate of Rs. 124.76 per tin totaling to Rs.62,879. After deducting the cost of Rs. 2951 the dealer was paid a sum of Rs. 59,928/-. The Assessing Officer did not believe the claim made by the dealer and held that the said 528 tins of oil was sold by the dealer in course of inter-state sale and was thus exigible to tax under the Central Sales Tax Act, 1956 (hereinafter referred to as the "**Act of 1956**"). The Assessing Officer accordingly raised demand of tax of Rs. 5992.80 at the rate of 10%. The said order was challenged by the dealer before the

appellate authority. The appellate authority dismissed the appeal on 30<sup>th</sup> September, 1984. Feeling aggrieved, the dealer preferred the above referred Second Appeal No. 98/1986 before the Tribunal. The Tribunal allowed the said appeal by its judgement and order dated 20<sup>th</sup> April, 1989. The Tribunal was pleased to hold that the production of declaration in form "F" by the dealer was sufficient proof of consignment transfer to a commission agent. Thereafter the onus to disprove the veracity of form "F" lay on the revenue. In the case on hand the revenue had not even questioned the genuineness of the declaration made in form "F". The transfer in question was thus held to be a consignment transfer and not an inter-state sale as held by the Assessing Officer. Hence, the present Reference at the instance of the revenue.

Mr Pancholi has submitted that the facts are not in dispute. He has relied upon Section 6(A) of the Act of 1956 and has submitted that the onus to prove that the transaction in question was a consignment transfer and not an incidence of inter-state sale lay on the dealer. In the present case, the dealer had failed to discharge the said onus. He has submitted that indisputably 528

tins of oil was sold by the dealer at the rate of Rs. 113.50 which accounts for the receipt of Rs. 59,928/- by the dealer. However, to manipulate the consignment, the dealer claimed that the sale was made by its agent, the Corporation, at the rate of Rs. 124.76 per tin. After deducting the amount of cost incurred by the agent, it had sent a sum of Rs. 59,928/- being the sale proceeds of 504 tins at the rate of Rs. 124.76 per tin. He has submitted that the fact that the aforesaid sum of Rs. 59,928/- was received by the dealer before it dispatched the consignment of 528 tins belies the claim made by the dealer that the said amount was received for 504 tins at the rate of Rs. 124.76 per tin. He has submitted that the dealer has failed to prove that the Corporation was its agent and was acting on behalf of the dealer.

He has submitted that the finding recorded by the Tribunal is contrary to the facts on record and is perverse. In support of his submission, he has relied upon the judgements in the matters of **SAHNEY STEEL AND PRESS WORKS LTD AND ANR Vs COMMERCIAL TAX OFFICER AND ORS**, [ 1985 (60) STC 301]; and of **ASHOK LELAND LTD. Vs UNION OF INDIA AND ORS**, [1997 (105) STC 152].

We have perused the judgement of the Tribunal as well as the orders of the assessing authority and the appellate authority. We are of the opinion that the Tribunal has erred in holding that the production of declaration made in form "F" is sufficient proof of consignment transfer. On production of such declaration the burden of proof cast upon the dealer by Section 6A of the Act of 1956 stands discharged. We are of the view that the production of declaration made in form "F" alone is not a sufficient proof of consignment transfer. In our opinion, the declaration made in form "F" is required to be supported by other corroborating and convincing evidence.

It has come on record that the aforesaid transaction has been brought about through one M/s. Narsidas & Company; a stranger. It was the specific case of the dealer that M/s. Narsidas & Company was not its broker. Had it been the case of consignment, a total stranger viz. M/s. Narsidas & Company would not have been required to bring about the transaction. We are, therefore, of the opinion that the finding of consignment recorded by the Tribunal is perverse. The Sales Tax Officer as well

as Appellate Authority was right in holding that the transaction in question was that of inter-state sale and not a consignment.

It is a fact on record that the sum of Rs. 59,928/- had been received by the dealer at the time it dispatched 528 tins of oil. The dealer had received the said amount obviously at the rate of Rs. 113.50 per tin. The claim of the dealer that out of 528 tins 24 tins were empty and that the dealer was paid the aforesaid sum of Rs. 59,928 at the rate of Rs. 124.76 per tin for the remaining 504 tins after deducting cost of Rs. 2951/-, is ex-facie false. There is nothing on record to suggest that 24 tins were empty as claimed by the dealer. In absence of any other evidence adduced by the dealer, the finding of transfer of 528 tins by consignment is perverse and requires to be interfered with.

We, therefore, hold that the transfer of 528 tins of groundnut oil by the dealer to the aforesaid Vimsag Oilseeds Corporation at Bangalore was a transfer by inter-state sale at the rate of Rs. 113.50 per tin. The dealer was, therefore, liable to pay sales tax payable under the Central Sales Tax Act, 1956.

The Reference is accordingly answered in affirmative, in favour of the revenue and against the dealer.

(ANIL R. DAVE, J.)

(Ms. R.M. DOSHIT, J.)

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